

Appl. No. : 10/829,135
Filed : April 21, 2004

REMARKS

This is in response to the Office Action mailed August 4, 2006. Claims 1, 4 and 10-19 are pending, Claim 19 having been newly added herein.

By the Office Action, the Examiner indicated the rejection of Claims 1 and 10-11 under 35 U.S.C. § 103(a) as being unpatentable over FDP Magnetics alone or in view of Fontana (USPN 4625508), and rejected Claims 4 and 12-18 as unpatentable over FDP Magnetics in view of Fontana or Kundert (USPN 2775093).

FDP Magnetics Web Page as Prior Art

Applicant challenges the FDP Magnetics reference as prior art. Applicant recognizes that electronic publications can comprise prior art. M.P.E.P. 2128. However, there must be reliable evidence of a date of publication in order for the document to comprise prior art (i.e. the date of publication must be subject to authentication). Applicant asserts that a number of irregularities with the Internet Archive originated web page cited by the Examiner necessitates that the web page not be considered prior art.

The Examiner cites an FDP Magnetics webpage which was printed on September 26, 2005, from the Internet Archive (www.archive.org). The Internet Archive indicates that the webpage has a date of December 17, 2002 (20021217). The webpage is of a "Unisex" magnetic link bracelet. However, when a user of the Internet Archive requests archived webpages for "fdp-magnetics", the list of available webpages does not even include an archived webpage from December 17, 2002. (See Exhibit A hereto). Since the Internet Archive does not even identify an archived FDP Magnetics

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webpage corresponding to the date identified on the document cited by the Examiner, this raises substantial questions about the authenticity of the date of that document.

Even if one selects an archived webpage which is close in time, such as December 1, 2002, or February 18, 2003, and one attempts to select "Uni-Sex Links" from the displayed page, neither page links to any page, let alone the page cited by the Examiner.

Applicant also notes that when some requested FDP Magnetix webpages are loaded from the Internet Archive, it appears that in many instances certain content is clearly linked which is much newer than the date of the requested page. In some instances, when a page is loading, one can see hypertext link information which is displayed in Internet Explorer. When loading archived FDP Magnetix webpages, some of this information has dates much different than the alleged date of the webpage being requested.

Associated FDP Magnetix webpages archived at the Internet Archive do not even match in time. For example, if one selects the "Uni-Sex Link" from the archived FDP Magnetix page of October 20, 2000, one is given the page which the Examiner cited: a page which is allegedly dated December 17, 2002. In other words, the Internet Archive is indicating that part of the "October 20, 2000" webpage is content which the Internet Archive indicates is allegedly dated nearly two years later. This again raises substantial concerns about the authenticity of the dating of these materials.

Given the substantial inconsistencies with the archived pages obtained via the Internet Archive, Applicant asserts that the FDP Magnetix webpage can not properly be relied upon as prior art.

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Rejections Over FDP Magnetics

Applicant asserts that even if the FDP Magnetics web page were properly citable as prior art, the reference does not, even in combination with the other cited references, disclose the invention as claimed.

As the Examiner indicates, the FDP Magnetics reference does not disclose the: (1) the claimed links of titanium or precious metal; (2) the claimed relative size of the face of the magnet compared to the face of the whole link as claimed; or (3) the claimed oval-shaped magnetic elements. The Examiner indicates that it would be obvious to modify FDP Magnetics to address these deficiencies. Applicant, however, has presented evidence of non-obviousness as to the invention as claimed. In particular, Applicant has submitted evidence that it is not obvious to: (1) utilize a solid titanium or precious metal link; (2) to simply increase “magnet size” and/or (3) use an oval magnetic element (including use of such in particular orientations relative to link configurations). As noted by the Federal Circuit, “[o]bjective evidence [of non-obviousness], composed of real world facts, is entitled to great weight in a case.” Rosemount, Inc. v. Beckman Instruments, Inc., 727 F.2d 1540, 221 U.S.P.Q. 1 (Fed. Cir. 1984). Such evidence “may often establish that an invention appearing to have been obvious in light of the prior art is not.” Minnesota Mining & Manufacturing Co. v. Johnson & Johnson Orthopaedics, Inc., 976 F.2d 1559, 24 U.S.P.Q. 1321 (Fed. Cir. 1992).

Relative to Claims 10 and 15, Applicant notes that, at most, the FDP Magnetics reference discloses plated magnetic jewelry. Claims 10 and 15 both recite links constructed from solid precious metal. As indicted in the prior-submitted Declaration of Jeffrey Dunmire, this configuration overcomes problems associated with link plating, such as wearing and scaling which ultimately result

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in exposure of the base metal and resulting issues of skin discoloration and the like associated with steel and similar base metals.

Relative to the oval shape of the magnetic element, as recited in Claims 4, 12 and 15, the Examiner asserts that it would be obvious to change the shape of the links to improve or change the aesthetical appearance of the bracelet. In particular, the Examiner asserts that it would be obvious to change the shape of the links to oval, and thus provide corresponding oval magnets (citing Kundert). Applicant notes, however, that Claims 4, 12 and 15 do not claim magnetic elements having the same shape as the corresponding link. In the preferred embodiment of the invention, oval magnets are utilized with rectangular links (i.e. the link shape and magnet shape are not the same). Applicant has amended Claims 1, 10 and 15 to specifically recite this particular configuration. This configuration is incongruous to Kundert, which teaches having link-shaped parts (1c) and cup-shaped parts (2c) of the same shape (Applicant asserts that Kundert is inapplicable generally, since in Kunder, the insert to the link has to be the same as the linking part, since the insert is actually the body of the link and were it not the same shape, there would be a hole or holes in the link). Applicant has also submitted evidence that it is not obvious to utilize an oval magnetic element, including with a rectangular link.


Relative to the link/magnetic surface area ratio claimed in Claims 1, 10, 11 and 16, Applicant also again notes the substantial evidence of non-obviousness previously presented by Applicant, including by the earlier-submitted Declaration of Jeffrey Dunmire.

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Summary

Applicant asserts that Claims 1, 4 and 10-19 are in a condition for allowance. If any matters remain outstanding, the Examiner is invited to contact the undersigned by telephone.

Respectfully submitted,

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INTERNET ARCHIVE



Enter Web Address: <http://>

All

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Searched for <http://fdp-magnetics.com>

73 Results

Note some duplicates are not shown. See all.
* denotes when site was updated.

Search Results for Jan 01, 1996 - Oct 23, 2006

1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
0 pages	0 pages	0 pages	0 pages	4 pages	8 pages	12 pages	20 pages	17 pages	11 pages	0 pages
				Oct 03, 2000 *	Feb 02, 2001 *	Jan 21, 2002 *	Feb 18, 2003 *	Jan 21, 2004 *	Jan 28, 2005 *	
				Oct 18, 2000 *	Mar 08, 2001 *	Jan 26, 2002 *	Feb 19, 2003 *	Feb 25, 2004 *	Feb 04, 2005 *	
				Nov 10, 2000 *	Mar 31, 2001 *	May 25, 2002 *	Mar 22, 2003 *	Apr 01, 2004 *	Feb 10, 2005 *	
				Dec 03, 2000 *	Apr 01, 2001 *	May 28, 2002 *	Apr 20, 2003 *	Apr 07, 2004 *	Feb 11, 2005 *	
					Apr 05, 2001 *	Aug 02, 2002 *	Apr 22, 2003 *	May 24, 2004 *	Feb 26, 2005 *	
					May 17, 2001 *	Sep 22, 2002 *	Apr 23, 2003 *	Jun 04, 2004 *	Mar 06, 2005 *	
					Jul 21, 2001 *	Sep 24, 2002 *	May 29, 2003 *	Jun 08, 2004 *	Mar 07, 2005 *	
					Dec 02, 2001 *	Sep 29, 2002 *	Jun 10, 2003 *	Jun 12, 2004 *	Mar 18, 2005 *	
						Oct 16, 2002 *	Jun 18, 2003 *	Jun 13, 2004 *	Mar 21, 2005 *	
						Nov 21, 2002 *	Jun 25, 2003 *	Jun 15, 2004 *	Mar 31, 2005 *	
						Nov 26, 2002 *	Jul 26, 2003 *	Jun 23, 2004 *	Apr 01, 2005 *	
						Dec 01, 2002 *	Aug 08, 2003 *	Jul 03, 2004 *		
							Aug 08, 2003 *	Jul 07, 2004 *		
							Sep 21, 2003 *	Jul 17, 2004 *		
							Oct 15, 2003 *	Jul 20, 2004 *		
							Oct 28, 2003 *	Sep 23, 2004 *		
							Nov 23, 2003 *	Sep 24, 2004 *		
							Dec 01, 2003 *			
							Dec 06, 2003 *			
							Dec 26, 2003 *			

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